

STATE OF INDIANA )  
 ) SS:  
COUNTY OF JOHNSON )

IN THE JOHNSON CIRCUIT COURT

CAUSE NO. \_\_\_\_\_

STATE OF INDIANA,

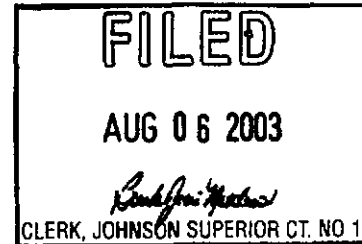
Plaintiff,

v.

LUKE GIBSON  
individually and doing business as,  
GIBSON'S LANDSCAPE MAINTENANCE,

Defendant.

41D010308 PL00033



**COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND COSTS**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.*, for injunctive relief, civil penalties, costs, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.

2. At all times relevant to this Complaint, the Defendant, Luke Gibson, individually and doing business as Gibson's Landscape Maintenance ("Gibson"), was an individual engaged in business as a home improvement contractor, with a principal place of business located in Johnson County at 2649 Branigin Creek Boulevard, Franklin, Indiana, 46131.

### FACTS

3. Since at least June 18, 2002, the Defendant has entered into home improvement contracts with Indiana consumers.

4. On or about June 18, 2002, the Defendant entered into a contract with Melanie Mills ("Mills") of Indianapolis, Indiana, wherein Defendant agreed to construct a patio at a price of Twenty Four Thousand Seven Hundred and Twenty-Four Dollars and Twenty-Five Cents (\$24,724.25). A true and correct copy of the Defendant's contract with Mills is attached and incorporated by reference as Exhibit "A."

5. On June 18, 2002, Mills paid the Defendant Eight Thousand Two Hundred and Forty One dollars and Forty-Two cents (\$8,241.43) as a down payment.

6. On or about July 8, 2002, Mills paid the Defendant an additional Seven Thousand Nine Hundred and Ninety-One Dollars and Forty-One Cents (\$7,991.41), based on the Defendant's representation that the money was necessary for the purchase of materials for use on Mills' home.

7. The Defendant failed to include the following information in the contract with Mills:

- a. The address of the residential property that is the subject of the home improvement;
- b. Each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- c. A reasonably detailed description of the proposed home improvements, or if the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the

specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

- d. The approximate starting and completion date of the home improvements;
- e. A statement of any contingencies that would materially change the approximate completion date; and
- f. Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

8. The Defendant failed to obtain the necessary permit required by Marion County and/or the City of Indianapolis prior to performing any of the contracted work on Mills' home.

9. At contract signing, Gibson represented to Mills that the work would be completed within a reasonable period of time.

10. The Defendant began, but has yet to complete, the contracted work, or issue a refund to Mills.

#### **COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

11. The services described in paragraph 4 above are "home improvements" as defined by Ind. Code §24-5-11-3.

12. The transaction referred to in paragraph 4 above is a "home improvement contract" as defined by Ind. Code §24-5-11-4.

13. By failing to provide Mills with a completed home improvement contract containing the information referred to in paragraph 7, the Defendant violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10.

14. The Defendant's violations of the Indiana Home Improvement Contracts Act, referred to in paragraph 7, constitute deceptive acts and subject the Defendant to the remedies and penalties under Ind. Code §24-5-0.5.

**COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

15. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The transaction referred to in paragraph 4 is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(a)(1).

17. The Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

18. The violations of the Indiana Home Improvement Contracts Act, referred to in paragraph 7, constitute a deceptive act in accordance with Ind. Code §24-5-11-14.

19. The Defendant's representation to Mills that additional money was required for the purchase of materials for use on Mill's home, as referenced in paragraph 6, when he knew or should reasonably have known that no such characteristics, uses, or benefits would be conferred upon or received by Mills, is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-05-3(a)(1).

20. By representing to Mills that the Defendant could provide home improvement services to Mills within a reasonable amount of time, when the Defendant knew or reasonably should have known that he could not, as referred to in paragraph 9 above, the Defendant violated Ind. Code §24-5-0.5-3(a)(10).

21. By soliciting to engage in home improvements without the necessary license or permit, as referred to in paragraph 8, the Defendant violated Ind. Code §24-5-0.5-10(a)(1)(A).

**COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

22. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 above.

23. The misrepresentations and deceptive acts set forth in paragraphs 6, 8, and 9 were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Luke Gibson, individually and doing business as Gibson's Landscape Maintenance, for a permanent injunction enjoining the Defendant from:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:
  - (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
  - (2) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
  - (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

- (4) A reasonably detailed description of the proposed home improvements;
  - (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
  - (6) The approximate starting and completion date of the home improvements;
  - (7) A statement of any contingencies that would materially change the approximate completion date;
  - (8) The home improvement contract price; and
  - (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

- c. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;
- d. representing, expressly or by implication, that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know he cannot; and
- e. in the course of entering into home improvement transactions, failing to obtain the necessary license or permits prior to the commencement of any home improvement work.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Luke Gibson, individually and doing business as Gibson's Landscape Maintenance, for the following relief:

- a. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;
- b. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

- d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and
- e. all other just and proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By: 

Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49

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